AUGUST 7, 1959

THE

SOLICITORS' JOURNAL

VOLUME 103
NUMBER 32

CURRENT TOPICS

Funds in Court

THE Report of the Pearson Committee on Funds in Court (Cmnd. 818, 4s. 6d.) is simple, practical and radical. The Committee accept the generally held view that the existing systems of investment in the Supreme Court and in the county courts are inadequate and unsatisfactory. The essential principle of the scheme which the Committee propose is that there should be a Central Fund, resembling, as we understand it, a national unit trust. Funds in the High Court, although capable of being invested in individual portfolios, should be invested mainly in this Fund; new funds in the county courts should in future always be invested in it and holders of existing funds in the county courts should have the option to have them transferred for investment to it. The Fund would be divided into two trusts, one for long-term moneys which would give participation in a wide range of investments including equities, and the other for short-term moneys. The Committee do not commit themselves to the precise form which the administration of the Central Fund should take, but they envisage that it should be run by a Corporation independent of governmental or political control. There should be a Governing Board or Council, the majority of the members of which would be chosen with regard to their experience in the fields of finance and investment, although there might be a minority representing legal and official interests. The Corporation would have the services of a highly qualified investment manager and staff. Instead of the Accountant-General holding investments in Government stocks he would hold rights or units in the Central Fund. The Committee thus go further than did the Council of The Law Society, and we agree that a new organisation is essential if there is to be a Central Fund. We also agree that the existing practice of controlling widows' damages should be retained. We should not be persuaded to modify it by the argument of sex equality; indeed, we would approach the matter from the opposite end and argue that there are many men whose damages should be controlled by the court in their own interests and the interests of their dependants. In so far as the Committee's recommendations call for legislation, we hope that it will be speedy. It will be something useful for Parliament to get its teeth into, although we concede that there are no votes in it either way.

More Legal Aid

WE welcome the amendments effected by the National Assistance (Disregard of Assets) Order (S.I. 1959 No. 1244) bringing the rules for computing allowances into line with the National Assistance scale rates, themselves amended by the

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National Assistance (Determination of Need) Amendment Regulations (S.I. 1959 No. 1241). Both instruments become operative on 7th September. Readers will be aware that before granting a legal aid certificate the National Assistance Board must be satisfied as to the eligibility of the applicant by reference to his means. For this purpose certain capital resources and income are disregarded. The limits so prescribed have now been amended. Apart from the disregarding of an interest in a dwelling-house in which the applicant resides and of the first £375 in national savings and certain approved banks (as provided by the National Assistance Act, 1948, Sched. II, paras. 1 and 2), any capital resources not so disregarded must so far as their aggregate value does not exceed £100 (instead of £50 hitherto) be disregarded together with all income therefrom; and so far as their aggregate value exceeds £100 (formerly £50) but does not exceed £600 (replacing £400), be treated as equivalent to a weekly income of sixpence for each complete £25. A weekly income of £4 5s. is allowed to a married couple in respect of requirements other than rent, with increases for dependants and certain special categories such as blind persons. To determine the applicant's income certain receipts up to £1 10s. (formerly £1) a week must be disregarded; these include sick pay from a friendly society or trade union and various types of pensions and allowances, the individual limit upon any one source being raised from 10s. 6d. to 15s. a week. It is good that the rules relating to assessment of need for purposes of legal aid have been made uniform with those in respect of national assistance. We hope that they will remain so tied and that the former will not be permitted to lag behind the latter for another decade in the unhappy event of more inflation.

Town and Country Planning

FOLLOWING rapidly upon the enactment of the Town and Country Planning Act, 1959 (on which see pp. 569 and 590, *ante*), are three statutory instruments becoming operative on the same day as the Act itself, namely 16th August. The Town and Country Planning General Development Order (S.I. 1959 No. 1286) lays down the procedure for certificates under s. 5 of the Act, such a certificate being needed in some cases in ascertaining, for the purposes of compensation, the fair market value of land being acquired by a public authority (arts. 3 to 6); it designates the classes of development for which, under s. 36, applications for planning permission must, from 16th August, be advertised, the form of advertisement being prescribed (art. 7 and Sched. I); and prescribes the form of certificates and notices under s. 37 requiring applications for planning permission, from 16th August, to be notified to the owners and agricultural tenants of the land concerned (art. 8). The Town and Country Planning (Prescribed Forms of Notices) Regulations (S.I. 1959 No. 1287) prescribe the forms in relation to long-standing notices to treat, additional compensation for additional development and the obligation of authorities to purchase forthwith the property of owner-occupiers affected by "planning blight." The appropriate level of rateable value fixed for the purposes of s. 39 has been named as £250 by the Town and Country Planning (Limit of Annual Value) Order (S.I. 1959 No. 1318). The MINISTER OF HOUSING AND LOCAL GOVERNMENT expressed the view in Parliament last week that the figure named would bring the great majority of small business owner-occupiers within the Act's terms. He will ask local authorities to exercise discretion beyond this figure where there is genuine hardship.

New Appeals

WE welcome warmly the HOME SECRETARY'S announcement just before Parliament rose last week that the Government are intending, "when a convenient opportunity can be found," to introduce legislation to improve the system of appeals in a variety of ways. They intend to remove the illogical and inconvenient rule whereby there is no appeal from the Divisional Court of the Queen's Bench Division in any criminal cause or matter, so as to provide for appeals to the House of Lords in applications for writs of habeas corpus and for orders of mandamus, prohibition and certiorari, in cases stated by petty and quarter sessions and in cases of contempt. Another illogical rule which is to be swept away is that which provides that an appeal from the Court of Criminal Appeal shall lie only on the fiat of the ATTORNEY-GENERAL. It is not intended, however, that there shall be an appeal as of right in any of these cases, but only where there is a point of law of general public importance which merits consideration by the House of Lords. Presumably the House of Lords will be the judge of this. The legal correspondent of *The Times* has suggested, in the course of some very outspoken observations, that it would be regrettable if the subject did not have an intermediate right of appeal to the Court of Appeal. We would oppose this, mainly on the ground of expense, but we think that there is a strong case for integrating the Divisional Court and the Court of Criminal Appeal with the Court of Appeal and thus achieving the same object. This would be a good opportunity to carry out some rationalisation on a high level.

County Courts

NEW County Court Amendment Rules and a Fees Order have been made and become operative on 1st October next. The County Court (Amendment) Rules, 1959 (S.I. 1959 No. 1251 (L.7)), amend the County Court Rules consequential on the consolidation of the County Courts Acts by the County Courts Act, 1959. Certain archaisms in the prescribed forms are removed. The main substantial amendments are that the court is given a discretion to order the payment of taxed costs, instead of the fixed costs stated on the summons, where the defendant satisfies the claim within eight days after service; the requirement that a creditor who wishes to suspend the execution of a warrant must file the debtor's signed authority to re-enter is abolished; the costs allowable on an application for an attachment of earnings order are equated with the lower amounts allowable on a judgment summons; the fees allowable in respect of expert witnesses are increased to five guineas for qualifying to give evidence and ten guineas for attending court; the scales of costs are amended so as to indicate more clearly which items are allowable where particulars of claim are settled by counsel and a new item is inserted in the scales of costs to enable a reasonable sum to be allowed for telegrams and telephone calls. The County Court Fees Order, 1959 (S.I. 1959 No. 1262 (L.9)), consolidates, with some minor alterations, the County Court Fees Order, 1949, and subsequent amending Orders. Under the Order increases are made in fees payable on the entry of a plaint for the recovery of possession of land together with a sum of money and on a plaint for an injunction or similar relief and a new fee of £2 on an originating application under the Companies Act, 1958, is prescribed. We hope to publish articles dealing with these changes in later issues.

NEW RESIDENCE PROBLEMS IN ADOPTION

In describing, at p. 381, *ante*, the innovations made by the Children Act, 1958, in the law relating to the removal abroad of British infants in connection with their adoption, the writer was, of deliberation, regarding only one side of the new statutory penny. To illustrate the conditions under which such infants can now be expatriated on adoption, or for the purpose of adoption, he assumed that the child was at the relevant time in Great Britain. It is worth turning over this useful new-minted coin, for the validity of its currency is by no means so restricted as the reader may perhaps have assumed from the previous article.

The provisions in question are to be found, after consolidation, in ss. 12 and 53 of the Adoption Act, 1958. The former section lets in applications by persons who are not ordinarily resident in Great Britain: the latter concerns cases where the applicant is not domiciled in Great Britain. Section 53 leads to a special and limited kind of adoption order—a provisional order; there is no such restriction in s. 12. The first point to make is this—that s. 12, whilst it contemplates a wider range of cases, must be equally applicable to the case of an application for a provisional order by a non-domiciled person, provided he is also not ordinarily resident. That such a person, applying for a provisional order (a full order of adoption not being in those circumstances open to him), can take advantage of the modification of the residence requirement enacted in s. 12 is clear from s. 53 (3), which says in terms that a provisional order may be made whenever, apart from the applicant's domicile, an adoption order can be made under Pt. I of the Act, and s. 12 is to be found in Pt. I.

Applications by non-residents

The wider aspect of s. 12 brings in cases in which a full adoption order is desired by persons who are domiciled in Great Britain, but who could not under the old law apply to an English court because they were not resident in England, nor to a Scottish court because they were not Scottish residents. Some such applicants may be temporary visitors to this country whose wish is to take away with them an English child and bring it up as their own. Or they may be, for instance, colonial civil servants wishing to adopt under English law, with its consequential benefits not always to be found under other jurisdictions, some child, it may be, of native origin, whom they have met in the colony. Again, the same circumstances may be imagined in relation to a domiciled Englishman living more or less temporarily in a foreign country. (The nationality of the child has ceased since 1949 to be a material factor, and its domicile never was.)

How will the requirement of a three month probationary period of care and possession of the child by the proposing adopter work in these cases? Such a period of trial has been for some years an essential pre-requisite in all adoption cases. The only general change made by the new legislation is the introduction of the condition that the period shall not start until the infant is six weeks old. The period must still continue right up to the making of the order in the sense that it is reckoned backwards from that date. But may any part of the period be spent abroad?

Formerly it was necessary in all cases for the applicant to give three months' notice to the local authority in whose area he was then resident of his intention to apply for an order, whereupon the child came under the supervision of the authority. How can this stipulation (which still operates except where the applicant, or one of two spouses who are joint applicants, is a parent of the infant or where the infant is above school age) be observed in non-resident cases? Does an application under the extended provisions necessarily involve a three-month stay in this country? The answer may have an important bearing on the utility of the new facilities in a particular case.

Section 12 itself supplies the framework of the solution. The notice, if necessary at all, is to be given to the county or county borough council within whose area the applicant is *living* at the time it is given (s. 12 (1) (*b*)). As to the probationary period, the relevant statutory provision is not modified at all in regard to sole applicants. But where a joint application for an adoption order is made by spouses who are not, or one of whom is not, ordinarily resident in Great Britain, any necessary notice to the authority may be given by either of the applicants, and only one of the applicants need have the care and possession of the child for the three month period immediately preceding the date of the order, provided that the applicants have been living together in Great Britain for at least one of the three months (s. 12 (3)).

Application of conditions in practice

Now to work out these conditions in practice. Suppose a sole applicant, ordinarily resident out of Great Britain, to be desirous of adopting in England a child, not her own, and not above the limit of compulsory school age, who is with her in the distant country. It is submitted that she must come to England or Scotland with the child at least three months before the application is to be heard, so as to be "living" within the area of an appropriate authority to whom she can give notice of intention to apply for the adoption order. When she gives the notice, the child automatically becomes in those circumstances a protected child, but there appears to be nothing specifically requiring a protected child to be kept in this country. The proposing adopter must give notice of changes of *permanent* address, but there does not seem to be any restriction on the situation of the new address. Having given the notice, it looks as if the applicant can go abroad again (as he or she may need to do for some business reason), subject to the procedural requirements presently to be mentioned, and provided that the child goes too.

If the applicant whose case we are considering is the child's parent, or if the child is over school age, so that no notice to the local authority is required, she can probably stay abroad, retaining of course the care and possession of the child, until a point of time much nearer the hearing date than the beginning of the three month period. Procedural matters may modify this liberty. A solicitor can lodge the application on her behalf, but the applicant and child must be on hand for the interviews which the guardian *ad litem* has to conduct before he makes his report. For, although it is laid down that the guardian may employ a suitable local agency to make inquiries about the applicant's home conditions, and may also interview respondents through the medium of an agent, it does not seem that he can relieve himself of the need to make personal inquiries of the applicant and the child, assuming the child is of an age to be conversed with. A children's officer or probation officer, or the Official Solicitor, who are the persons most commonly to be appointed guardians *ad litem*, can hardly be obliged to travel abroad to make their inquiries. Whether the appointment of some private

individual as guardian would be authorised under the terms of High Court r. 5 (1) or County Court r. 8 (2) (*c*), on the ground that he was a person who appeared to be suitably qualified and who was able and prepared to make the inquiries abroad, is a matter that may perhaps one day be tested.

Duties of guardian *ad litem*

Assuming that such an expedient is out of the question, the applicant must at all events be in England by the time the guardian is ready to undertake the relevant inquiries. The guardian must then report to the court. In the High Court it is not until he has done this, and notified the applicant accordingly, that an appointment for the hearing is taken. In the county court the hearing date is fixed when the guardian is appointed, and apart from his duty to inform the court as soon as practicable if the child seems capable of understanding the nature of an adoption order, there appears to be no special time by which the guardian must produce his complete report.

It may be surmised, then, that three or four weeks before the hearing would be an average appropriate time for the applicant to bring the child to England in a case where notice to the local authority is *not* necessary and where a solicitor here is looking after the case. An appreciably longer interval would almost certainly be necessary in the case of a High Court application.

Joint applicants

The position in this regard of joint applicants is rather different. Whereas a sole applicant must always attend before the judge, there are provisions under which one of two joint applicants may be excused personal attendance on verifying the application in a prescribed manner (see County Court r. 12). Only the necessity for both applicants to live together in Great Britain for at least one of the three probationary months is inexorable.

In a typical case it might be the husband who was temporarily in England at the inception of the proceedings, while the child whose adoption was sought was with the wife in the foreign country. The husband could then give the notice to the local authority if necessary, while the wife continued to care for the child abroad, coming to England for only the last of the three months. In such a case, by the definition in s. 37 (1), the child does not become a protected child merely by the giving of the notice: the child is said to be protected while it is in the care and possession of the *person giving the notice*, and there is nothing to say that that person must be the spouse that has possession of the child at the time of the notice. The protection would seem to begin, in the example just taken, when the wife arrives with the child to spend the statutory month with her husband.

Supposing, lastly, that it is the wife and child who are free to come to England and to stay as required for the purpose of the proceedings, while the husband needs to remain abroad for business or other reasons for as long as he can. Unless the wife is to be sole adopter, the husband must spend at least a month with the wife in Great Britain, but that need not necessarily be the month immediately preceding the making of the order, so long as it forms part of the period of three months ending with the order.

No pretence is made to have covered here more than the most obvious among the possible combinations of circumstances. If readers have been alerted to a feature of the new law on which practitioners will certainly have to brief their clients fully, these rather formless hypotheses will have served a purpose. It remains only to say that in connection with provisional applications, "six months" is to be read for "three months" both in regard to the probationary period and to the period of notice to county and county borough councils (s. 53 (5)).

J. F. J.

Practical Conveyancing

IMPLIED ASSENTS

THERE is probably no better way of identifying the problems which frequently cause difficulty to practising solicitors than by examining the "Points in Practice" which are sent to THE SOLICITORS' JOURNAL. For some time it has been apparent that many solicitors hesitate before deciding whether, in various circumstances, assents can be implied. This is not in the least surprising because an assent implied from the facts of the case, including the actions of the personal representatives, is one of the few examples of the passing of a legal estate which is not the consequence of a document or a grant of representation. A few notes on the basic rules may, therefore, be of assistance.

Assents before 1926

It is helpful to consider first the law in operation before 1926. We are inclined to forget that prior to the Land Transfer Act, 1897, realty passed directly to the devisee or heir. Although some questions affecting leaseholds, being personalty, occurred before that date, it was the 1897 Act which gave rise to most problems. The Land Transfer Act, 1897, s. 1 (1), provided that on death after 1897 real estate vested in the deceased, without a right in any other person to take by survivorship, should, notwithstanding any testamentary disposition, vest in his personal representatives. There is a very similar enactment in the Administration of Estates Act, 1925, s. 1 (1). The realty having been vested in the personal representatives, they could deal with it for purposes of administration, but subject to these powers the question arose as to how they should in due course vest it in the persons beneficially entitled.

The Land Transfer Act, 1897, introduced an unfortunate distinction which has often been overlooked and sometimes results in the offering of a title which is still a bad one. Section 3 stated that personal representatives "may *assent to any devise* contained in his will, or may *convey* the land to any person entitled thereto *as heir, devisee or otherwise.*" Thus the power to transfer the legal estate in realty by a mere assent (as distinct from a conveyance under seal) was restricted to an assent giving effect to a devise. Many errors have been made by purporting to assent in favour of an heir.

The power of an executor (or an administrator with the will annexed, for instance) to assent in respect of a devise introduced an element of informality into the transfer of a legal estate which has not yet by any means ceased. Assents in respect of personalty (including leaseholds) could be implied from the actions of executors before 1897 and similar rules operated after that date to determine the passing of a legal estate in freeholds. The fifth edition of Emmet on Title,

published in 1903, contains the following note: "In cases of long standing the assent of the executor may be presumed, upon the principle that in the absence of evidence the executors shall be deemed to have done their duty. For instance, the assent would be presumed where the legatee possessed himself of the subject bequeathed, and retained it for some considerable time without complaint by the executor."

It was often necessary before 1926, and it may still be essential, to decide whether the personal representative has assented, and so put an end to his powers as such. Occupation of the land, or beneficial receipt of rents, for an appreciable period is the main test. For instance, in *Wise* v. *Whitburn* [1924] 1 Ch. 460 occupation of a leasehold house by a widow for ten years was held to prove that the executors had assented to the bequest of the house to her for life. If it can be shown by statutory declaration that administration of the estate has been completed and that a devisee has been in possession for well over a year there is probably good ground for implying an assent.

Assents after 1925

As in many other respects the 1925 legislation was intended to avoid the uncertainty, but it did not succeed entirely. The Administration of Estates Act, 1925, s. 36 (4), provides that an assent to the vesting of a legal estate shall be in writing, signed by the personal representative and that "an assent not in writing or not in favour of a named person *shall not be effectual to pass a legal estate.*" At first sight this would seem to provide a ready test to determine whether the legal estate is still in the personal representatives or whether it has passed to the persons next entitled whether beneficially or as trustees, namely whether there has been (i) a written assent, (ii) signed by the representatives, which (iii) named the person in whose favour it was given.

On completion of administration of an estate it is now usual to execute all necessary assents. On the other hand for a variety of reasons this action may be delayed or overlooked altogether. In practice the most frequent cause of difficulty is the death, before assent, either of an administrator, or of an executor who has not himself appointed an executor. In these cases there is no chain of representation and so a grant *de bonis non* to the estate is essential to make title. There is usually no problem if an executor dies having appointed an executor who proves his will as that person also becomes executor by representation of the original testator (Administration of Estates Act, 1925, s. 7).

Consequently, the circumstances in which solicitors most often have to consider whether an assent can be implied arise on death of a personal representative without having executed a written assent and without there being any chain of representation. It is now generally accepted that where the personal representative or representatives and the person or persons entitled to have the legal estate vested in him or them are the same a written assent (although advisable) is not essential and the assent can be implied in the same circumstances as before 1926. The reasoning behind this view is based on the wording of the Administration of Estates Act, 1925, s. 36 (4), to the effect that an assent not in writing "shall not be effectual to *pass* a legal estate." It is contended that where transferor and transferee are the same person the estate does not "pass" and so writing is not essential. This argument has been pressed for many years but there is still no decision of a superior court confirming it. Nevertheless, it was the ground for the decision of a county court in *Harris* v. *Harris* (1942), 9 L.J.N.C.C.R. 119, and more recently in *Hurley* v. *Simmonds* (1957), 107 L.J. News. 60, another county court judge expressed the same view, although an implication of an assent was not raised by the particular facts. The writer would, therefore, repeat the opinion he expressed in Emmet on Title, 14th ed., vol. 2, p. 474, in these words: "If the personal representative is still alive it would be wise to insist on an assent in writing, and it seems unlikely that the title would be forced on a purchaser if this was not obtained. On the other hand a purchaser seems safe in accepting a title based on an implied assent if a written one cannot be obtained and provided that the facts give rise to a clear implication of an assent (for instance, where administration is complete and possession of the property has been taken beneficially)."

It remains to note that the problem arises not only where personal representatives are beneficially entitled, but also where they are entitled to have the legal estate vested in them as trustees for sale. On death of a sole or last surviving trustee for sale the estate devolves on his personal representatives whether executors or administrators (Administration of Estates Act, 1925, ss. 1 (1) (3) and 3 (1) (ii)) and they may exercise his powers until new trustees are appointed. This means, for example, that on death of a person who was both sole executor and trustee, without leaving a will, a grant *de bonis non* will be necessary if he held as executor but may be avoided if, by reason of an implied assent in his own favour, he had become sole trustee for sale.

Appointment without assent

One further problem which has been put to us many times occurs when the same persons are appointed executors and trustees and the title shows an appointment of new trustees (with an express or implied vesting of the legal estate in the new trustees) but no prior assent. Here again, we can quote no decision of a superior court as authority but we would express the firm view that the title can be accepted. A deed of appointment executed by trustees for sale must be read as including an assent by themselves as executors to themselves as trustees.

These observations do not cover all possible combinations of fact but it is hoped that they explain what is believed to be the generally accepted practice in cases of most frequent occurrence.

J. Gilchrist Smith.

Honours and Appointments

Mr. Francis Reginald Armstrong, solicitor, of Leeds, is the new president of the Incorporated Leeds Law Society.

Dr. Maurice R. R. Davies, solicitor, of Keighley, has been elected president of the Old Keighlians' Association.

Mr. Charles R. Dixon, solicitor, has been appointed Clerk to the Justices for the Bulmer East Division of the North Riding of Yorkshire.

Mr. Geoffrey Thomas Heckels, solicitor, of Maidstone, has been appointed Clerk of Kent County Council in succession to Mr. Gerald Bishop.

Mr. Edgar Lloyd Metcalfe, solicitor, of Keighley, has been appointed deputy town clerk of Bridlington.

Mr. William Arnold Sime, M.B.E., Q.C., has been appointed Recorder of the Borough of Grantham.

Common Law Commentary

"PREPARED TO ENTER INTO A CONTRACT"

THE case of *Ackroyd & Sons* v. *Hasan* [1959] 1 W.L.R. 707; p. 472, *ante*, is another estate agent's commission case. It follows the general trend of decisions, particularly since 1950, in construing the terms agreed between the owner and the agent as not entitling the agent to any commission unless a sale has been effected.

Commission payable before sale

Parties can, of course, agree that commission shall be payable on some event earlier than the stage where a binding contract has been reached, and there are cases where that has been done effectively. Thus commission has been held to be payable on the mere making of an offer as in *Bennett, Walden and Co.* v. *Wood* [1950] 2 All E.R. 134 (but only on a firm offer, not on one "subject to contract": *Graham & Scott (Southgate), Ltd.* v. *Oxlade* [1950] 2 K.B. 257). In another case it was held to be payable on the signing of a contract, irrespective of whether the transaction results in an actual sale: see *Midgley Estates, Ltd.* v. *Hand* [1952] 2 Q.B. 432, and *John E. Trinder and Partners* v. *Haggis* [1951] W.N. 416.

But in general the courts take the view that the normal intention between a vendor and an estate agent is that the agent only gets his commission on a successful outcome of the desire to sell, namely, an actual sale. To this end such phrases as "introduce a party who purchases," "introduce a party who is ready to purchase," "introduce a party who is prepared to purchase," or "introduce a party ready, able and willing to purchase" are all construed as meaning the same thing, namely, "introduce a party who does in fact purchase."

Need for precision

It must not be imagined, however, that there is now an attitude of prejudice in favour of one construction only, or that the courts have adopted a slapdash or palm-tree justice mode. On the contrary, Winn, J., expresses his view of the matter as follows (at p. 711): "I think that in this sort of contract one must look with very great precision at the definition of the event upon which the reward will be earned . . ." He goes on to say that he was constrained "not by any express direction from the Court of Appeal, but by the philosophy implicit in the judgments in the cases decided in 1951 and 1952, to regard the phrase 'prepared to enter into' as a nullity, if that phrase is sought to be construed against the owner of the property . . ."

In this case it was accepted that the relevant part of the contract between the owner and the estate agent was that "in the event of our introduction of a party prepared to enter into a contract to purchase on the above terms or on such other terms to which you may assent you will allow us a commission upon the scale of the Estate Agents' Institute."

The "above terms" included a price of £12,000 which was not offered by the party introduced. Instead he offered a price of £9,750 for the property, subject to contract, and there was a term relating to a sub-lease. Both parties instructed solicitors to act in the preparation of the contract and in due course the position was reached when the final terms for the written instrument were agreed and the vendor's solicitor sent one copy to the purchaser's solicitor for signature and the other to his own client. The purchaser signed but the vendor did not. She realised at the last minute that the terms in respect of the sub-lease were incorrect. The agent had not introduced a purchaser "on the above terms," but had he introduced a purchaser [prepared to enter into a contract] to purchase on "such other terms to which you may assent"?

Locus pœnitentiæ

The court decided that such a purchaser had not been introduced because the vendor was not legally bound until she had signed, and until that moment arrived she had a right to change her mind. She having made clear what alteration she wanted in regard to the sub-lease, the purchaser was not prepared to go on, and no sale resulted. It is clear that, accepting that the vendor has a *locus pœnitentiæ* notwithstanding that written contracts have been drawn and settled by solicitors on both sides in terms which up to the engrossing of the contracts the parties were apparently willing to accept, the purchaser was not "prepared to enter into a contract . . . on such other terms to which you may assent."

There were therefore two grounds on which the claim failed. The first arises because of the ineffectiveness of the words "prepared to enter into": what matters is whether the person introduced does actually enter into a binding contract, and where contracts are engrossed in duplicate for exchange, they are not binding until actually exchanged (*Eccles* v. *Bryant and Pollock* [1948] Ch. 93). Secondly, the person introduced did not enter into a binding contract in terms to which the vendor was, in fact, prepared to assent.

Ignoring a phrase

It is unusual for the courts to lay down that, in construing a document, words which appear to have a clear qualifying meaning shall be ignored. If the words which were ignored in this case, "prepared to enter into," were put in to help prevent a vendor's capriciously resiling from negotiations which appear to have promise, one must go back to *Luxor (Eastbourne)* v. *Cooper* [1941] A.C. 108 and point to the basic principles laid down by the House of Lords. A vendor does not impliedly agree to refrain from acting, even capriciously, in a manner which will deprive the agent of his commission.

What proportion of vendors does withdraw in this way is not known to the writer. Perhaps it is a little higher than we should expect. But *Luxor's* case made clear that the estate agents' method of remuneration is essentially a "swings and roundabouts" affair, rather than one which represents payment for work done.

No injustice

Consequently, it appears that there is no injustice arising from the ignoring of the phrase mentioned. The average vendor does not expect to have to pay an estate agent except out of the purchase-money, when he agrees to employ him, and agents know that this is what the vendor thinks he is agreeing to.

It seems that this is not a case quite like *Trinder* v. *Haggis*, *supra*, though it is similar to it. It is one thing to say that commission shall be payable "on the signing of a contract" and another thing to say that it shall be payable "on introducing a person who enters into a contract." In the second case the commission is not payable on the mere introduction (on these words at any rate) nor on the entering into the

contract, because the general rule is that the contract must be one which results in a completion. The phrase is not so precise as one which refers to "signing." This point of similarity, which is yet distinct, was noted by Winn, J. (at p. 711), and was the reason for his statement that precision is needed in construing this type of contract.

There must, however, be few laymen who study with precision the contract offered them by an estate agent, and it is because of that that we need the general principle that commission is payable only on completion. The defendant here may well have avoided the claim by fortuity rather than judgment.

L. W. M.

A Conveyancer's Diary

ONE WAY OF "ADVANCING" A YOUNG BENEFICIARY

Now that the device of a life tenant purchasing the interest in reversion confers no immediate benefit in the way of saving estate duty, the exercise of a power of advancement with this object in view has acquired added attraction. It is a simpler and neater operation than the purchase of the reversion, and the passage of five years has the effect of removing the funds advanced from the parent settlement for all purposes, thus securing exemption from liability to estate duty on the death of the tenant for life. The alleviation of the burden of estate duty on the death of the tenant for life, with the consequence that the beneficiary in whose favour the power of advancement is exercised will enjoy the funds advanced free from that burden, is a perfectly respectable consideration for trustees to entertain where exercising their discretion whether to exercise the power or not (*Re Ropner's Settlement Trusts* [1956] 1 W.L.R. 902). It may, indeed, be the sole consideration; it is not necessary that the beneficiary being benefited should be in any immediate need of the funds being advanced (*ibid.*). (I have used the words "advancement" and "advance," but as I have said on other occasions in this Diary, the statutory power in s. 32 of the Trustee Act, 1925, and many forms of express power, are powers to apply capital for the benefit of a beneficiary. In the case of such powers, the word "advancement," which has a technical and restricted meaning, is irrelevant: application of capital is the salient phrase. This is now quite clear, as a result of the decision in *Re Moxon's Will Trusts* [1958] 1 W.L.R. 165.)

The simplest case

If, therefore (to take the simplest case), a fund stands settled on *A* for life with remainder to *B*, and it is desired to take some part of the trust fund out of settlement to lighten the burden of estate duty on the death of *A*, the trustees in exercise of the statutory or any similar power may properly transfer property up to a value within the limits of the power (not in excess of one-half of his presumptive share, in the case of the statutory and many express powers) to *B*, without more, irrespective of whether *B* needs the money or not. That is the simple case, where *B* is a responsible adult. The position is, of course, not quite so simple when *B* is under disability—in the common case, an infant. The practice in such a case has been to arrange that the funds advanced should be held in trust for *B*, either for life, or for some shorter period.

Re Wills' Will Trusts

That it is a proper exercise of a power of advancement that the funds advanced shall, instead of being transferred out and out to the beneficiary, be held in trust for him, became clear as a result of the decision in *Re Wills' Will Trusts* [1959] 1 Ch. 1. That case was complicated by two factors, not normally present in the kind of case which I have in mind. The first was a point of construction which is wholly irrelevant for the present purpose. The second arose on the form of the power, which was an express power to "raise any part of the then expectant . . . share . . . of any person . . . and to pay or apply the same for his or her advancement or benefit." The trustees in one operation declared that a part of the expectant share of an infant beneficiary should, in exercise of the power, be held on certain specified trusts for his benefit. The funds in question did not, therefore, leave the trustees' hands, and the question arose whether they had ever exercised the power at all, that is, whether they had "raised" anything. Upjohn, J., held that, broadly speaking, they had: funds had been taken out of the testator's settled residue and were then held on other trusts. This point cannot arise in quite this way on the statutory power, in which the word "raise" is not used. The statutory power is a power simply to "pay or apply any capital money subject to a trust."

Re Pilkington's Will Trusts

The propriety of such an exercise of this power has now been underlined by the decision in *Re Pilkington's Will Trusts*, p. 528, *ante*. A fund was held upon various trusts for the benefit of a class of the testator's nephews and nieces during their respective lives, and after their deaths on trust as to capital and income for such of their children as they should appoint. One of the nephews had infant children, and it was proposed that, for the purpose of saving estate duty, the statutory power should be exercised by applying up to one moiety of the expectant share of one of the infants (who was two years old at the date of the application) by adding it to a fund which it was proposed should be subject to the trusts of a new settlement. Under this new settlement the income of the fund was to be applied for the beneficiary's maintenance until she attained the age of twenty-one, and from then until she attained the age of thirty should be paid to her, when the capital was to be held on trust for her absolutely. (It is not entirely clear from the report whether the trustees of the testator's will were also to be, or were, the trustees of this new settlement. References in the judgment to "resettlement of the money" and to the perpetuity rule, which was declared to be quite inapplicable to the transaction, indicate perhaps that they were the same persons.) On a summons to determine the question, it was declared that the trustees might lawfully exercise the statutory power of advancement in this way.

This is the clearest authority to date that it is a proper exercise of this power if it is made in the form of a settlement for the benefit of the relevant beneficiary. Like the decision in *Re Moxon's Will Trusts*, *supra*, by the same judge

(Danckwerts, J.), it may not have decided anything which had not been decided before; but it is extremely useful nevertheless as clearing up any doubts which may have lingered as a result of earlier decisions having been cluttered with extraneous matter. Moreover, the form of the settlement for the infant's benefit which received judicial approval in this case is an excellent one. It is short and simple, being concerned with one thing only: the preservation of the capital of the fund until the beneficiary is of a sufficient age to manage it for him- or herself. (It is, of course, not a new form: settlements on these lines have been in regular use in like circumstances for years.) The final form of a settlement of this, as indeed of any other, kind must depend on the circumstances, and doubtless there were sound reasons for not including in this case a power to the trustees of the new settlement to pay or apply any part (up to the whole) of the capital of the fund, during the currency of the settlement, to or for the benefit of the beneficiary. Such a power, in extension of the statutory power, which of course in the absence of a contrary indication applies to the new settlement as it similarly applied to the parent settlement, is often extremely useful if the infant beneficiary's parents' means are limited and maximum recourse is desired to the settlement funds for educational purposes.

Conclusion

To sum up: if a fund is settled on *A* for life with remainder to *B*, an infant, and it is desired to exercise the statutory, or a similar, power for the benefit of *B*, an excellent way of setting about the transaction is to create an *ad hoc* settlement of (say) £100 for the benefit of *B*, on the lines of the new settlement in *Re Pilkington's Will Trusts*, with perhaps a more extensive power of applying capital for the beneficiary's benefit such as I have suggested. The trustees of the new settlement may or may not be the same persons as the trustees of the parent settlement. The trustees of the parent settlement then, in exercise of the power, transfer the appropriate portion of the trust fund to the trusts of the new settlement. The property thus transferred immediately ceases to be subject to the trusts of the parent settlement, with all the advantages from the estate duty point of view which will then flow in the future from such cesser.

"A B C"

Landlord and Tenant Notebook

LANDLADY AND LODGER

I DEVOTED last week's "Notebook" (p. 595, *ante*) to the question of restrictions on the right to let apartments and lodgings, the occasion being the holiday season. Disputes between those who let and those who take apartments for holidays do not often lead to litigation; not that legal rights may not be infringed, but rather because parties find it better to forget their grievances than to pursue their remedies, possibly in distant courts. Consequently, while I propose to write something about the respective rights and obligations of such parties, the illustrations will not include any decisions in which holiday-makers were concerned.

Writing

Two questions may turn upon the interpretation of the Law of Property Act, 1925, s. 54 (2), which runs: "Nothing in the foregoing provisions of this Part of this Act shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine." For if *A*, having visited some seaside resort in June and agreed orally to take apartments for a period in August, finds that *B*, the landlady, has then "let" them to someone else; or if *B* learns that *A* has changed his plans, can either sue the other, and for what?

The "foregoing provisions" include those of s. 40, by which no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which the action is brought or some memorandum, etc., is signed by the party to be charged, etc., the second subsection saving the law relating to part performance. Accordingly, the first question which may fall to be considered is whether there has been a contract for the disposition of land between *A* and *B*; if there has not, one need not consider the applicability of the s. 54 (2) exception.

Normally, the answer will be that there has: *Inman* v. *Stamp* (1815), 1 Stark. 12, and *Edge* v. *Strafford* (1831), 1 C. & J. 391, are good authority for the proposition that when specific rooms are agreed to be taken as apartments or lodgings the section applies. In both these cases the owners of apartments sought unsuccessfully to sue intended tenants "for not taking," and were unable to prove part performance. But a mere agreement for board and lodging, no particular accommodation being defined, is not so affected: in *Wright* v. *Stavert* (1860), 2 El. & El. 721, a landlady recovered damages for breach of a contract for board and lodging.

But a further question may then arise: assuming that no action can be brought for breach of contract, can s. 54 (2) be invoked to prove the existence of a "lease"? The possible validity of an "oral lease" was established long ago by *Maldon's Case* (1584), Cro. Eliz. 33; the effect of the Statute of Frauds and of the Law of Property Act, 1925, s. 52, was succinctly stated by Lord Goddard, C.J., in *Kushner* v. *The Law Society* [1952] 1 K.B. 264 ("you can still make a lease for a period not exceeding three years by writing or even by word"); but what is most likely to trouble *A* or *B* or their advisers is the fact that the agreement in their case was to commence at a future date. There is, however, good authority to show that as long as the term will come to an end within three years from the making of the agreement, the exception will apply. It was held to apply when the Statute of Frauds was still young in *Rawlins* v. *Turner* (1699), 1 Ld. Raym. 736, and *Ryley* v. *Hicks* (1725), 1 Str. 651.

The distinction between claiming damages and claiming enforcement was pointed out by Bayley, B., in *Edge* v. *Strafford*, when he explained that *Ryley* v. *Hicks* was not at variance with *Inman* v. *Stamp*.

Responsibility for guests' goods

There have been a number of decisions on the responsibility of lodging-house keepers and boarding-house keepers for their lodgers' and guests' belongings, and the reasoning would be applicable to most cases in which holidaymakers lost their property in like circumstances.

The principles were carefully and clearly stated by Collins, M.R., in *Scarborough and Wife* v. *Cosgrove* (1905), 21 T.L.R. 754 (C.A.), in which it was laid down that the liability of a boarding-house keeper was the same as that of a lodging-house keeper, as illustrated by older authorities: a liability to take reasonable care.

In this, and in subsequent cases, locks and keys played an important part. The plaintiffs sued for the value of jewellery stolen by a fellow-guest (accepted without references); the jewellery was kept in a case which had a lock and a key, and that case in a hand-bag which also had a lock and key; the hand-bag was left in a chest of drawers which appears to have had a lock, as the plaintiffs had asked for a key—but in vain; and this chest was in the plaintiffs' bedroom the door of which had a lock and one key, which the defendant asked the plaintiffs not to take away from the house, it being required by the servant who cleaned the room. The bag had been cut open and the jewel-case and contents stolen by a fellow inmate. Darling, J., held that a boarding-house keeper was under no duty to take care of his lodgers' goods unless they were handed to him for safe custody, and withdrew the case from the jury. After examining all the authorities, and reconciling some which appeared to be irreconcilable, the Court of Appeal came to the conclusion that, as the landlord carried on the business of a boarding-house keeper for reward, he was bound to carry on that business with reasonable care, having regard to the nature and normal conduct of the business as known to the guest, or as represented by the guest to him, and that there was in the case before them a case to meet; and ordered a new trial.

In *Paterson* v. *Norris* (1914), 30 T.L.R. 393, the plaintiff's main complaint was that the defendant, keeper of the boarding-house where she lodged, failed to keep the front door (of the annexe) closed, in spite of repeated requests. Her jewellery had been stolen from a drawer in a dressing-table which had been broken open; it had a lock, and though the defendant had not provided a key, the plaintiff had found that one of her own did the work. The front door had a lock and was sometimes closed. The door of her room had a key but (like the one mentioned in *Scarborough* v. *Cosgrove*) it had to be left with the maid. The plaintiff also alleged that as the defendant had no safe there would have been no point in depositing her jewellery with her. Coleridge, J., held that the defendant was bound to take reasonable care that the door should be kept shut, but that she did not guarantee that it should be; and found that reasonable care had been exercised in the circumstances.

Caldecutt v. *Piesse* (1932), 49 T.L.R. 26, resulted in a victory for a guest at a guest house, who had occupied a bedroom which had a door with lock and key, but which could not, it was found, be locked from the outside; she had complained about this defect. Her diamond ring was stolen from a little box on her dressing-table. The lock was later repaired. Swift, J., held that the defendant was not fulfilling her duty if she provided a room for a guest who came with the expressed intention of making her residence there, in which she would probably keep such valuables as she had got, if that room could not be locked from the outside by the guest.

Occupiers' liability

Lastly, the answer to some questions which may be put to practitioners consulted by landladies and lodgers may be found in the Occupiers' Liability Act, 1957, defining the "common duty of care" owed by an occupier of premises to "all his visitors" (s. 2 (1)); and in particular in s. 2 (3) (*a*), by which the circumstances to be considered when deciding whether the duty has been discharged include the degree of care, and of *want of* care, which would ordinarily be looked for in the visitor, so that "an occupier must be prepared for children to be less careful than adults." The enactment does, of course, do no more than approve Lord Denman, C.J.'s "Ordinary care must mean that degree of care which may reasonably be expected from a person in the plaintiff's situation; and this would evidently be very small indeed in so young a child," in *Lynch* v. *Nurdin* (1841), 1 Q.B. 29. If the "*minimis*" in "*de minimis non curat lex*" were not either, the maxim would be most misleading.

R. B.

HERE AND THERE

SUSPICIOUS CHARACTER

THE red-faced, square-jawed man, with the solid business background, a double whisky in his hand and a Bentley waiting outside the bar, has no doubt at all what poets are like. They are scrawny, weedy, scraggily bearded, long-haired, slovenly yet outlandish in their dress, affected in speech, immoral, probably degradedly so; they either write nimminy-pimminy verses to the spring or an unintelligible gibberish; they are poor and therefore negligible and useless. This vision is probably shared by the majority of police officers, factory workers and practical men in all walks of life. It would be beyond their imagination to visualise a different attitude of mind. That a poet as such should be greeted in a great capital city with trumpets and banners and a laurel crown and the triumph of a conqueror, as Petrarch was in Rome, would seem to them just another proof of the excitable inferiority of the Italians and far less intelligible than the hysterical ovations accorded to the latest teenage wonder electric guitarist—after all there's *money* in rock'n roll and "pop" songs.

NO DEFENCE

IT is no wonder that the poet is a constant object of suspicion to the police and to the sort of citizens who report unorthodox behaviour to the authorities. He is as far apart from his fellows as the yogi from the commissar. If at two in the morning he stands in a London square staring at the stars through a tracery of bare branches, what policeman will accept the story that he is lost in contemplation as an answer to a charge of loitering with intent to commit a felony? If he stares in inspired wonder or admiration at the configuration of the faces of passers-by will that be believed by a policeman who has got it fixed in his head that it is a case of insulting behaviour or worse? Now in New York City a poet has stumbled upon an entirely new way of getting into trouble with the authorities, and finds himself charged before the magistrate with the picturesque offence of "orating without a licence" in a public park. Poetic licence is well known and, hitherto we have always understood, is within the reach of the humblest rhymester. Oratorical licence we have met with in the pulpit, on the platform and, of course, at the north-east

corner of Hyde Park, though we never connected either of these licences with applications to Scotland Yard. But apparently it is far otherwise in New York.

DID HE "ORATE"?

MR. WILLIAM MORRIS is an artist and a poet. As an artist he can, it seems, paint in oils with equal ability with his hands or with his feet. This must be a particularly useful talent, because, when he's painting with his feet, his hands are free to write poetry and perhaps *vice versa*. But if pictures flow from his toes and poetry from his finger tips, it also flows, perhaps a shade too readily, from the tip of his tongue, and the present trouble arose when his poetic declamations collected about him a crowd of 200 persons, which attracted the attention of a policeman evidently of the stern original Puritan stock of New England, for his name was Calvin Simmonds. The charge has now assumed the proportions of a test case on the liberty of the subject. The poet's lawyer told the magistrate: "I do not think that any lowly Park Commissioner can write a regulation that you may not read, that you may not sing, that you may not laugh." If the law of New York is similar to our own, he seems to be appealing to the principle that a byelaw must not be unreasonable or repugnant to the general law. It is a nice point of construction and a matter of degree (as the lawyers love to say) what forms of human speech amount to orating. Normal conversation (especially the average mumbled English variety) could never be classed as oratory. But, by contrast, Queen Victoria (I think) complained that Mr. Gladstone addressed her as if she were a public meeting. We all know that sort of conversation too. If so addressed in a New York park could we give our tormentor in charge? Can one draw a distinction between Shelley's address to the skylark and St. Francis preaching to the birds? Or between a Greek invocation to Zeus or Aphrodite and a rendering of "Paradise Lost" in its entirety? The prosecution in the case of the vocal poet of New York is inclined to brush aside these doubts. The regulation against orating, it says, is aimed at controlling not art but crowds. The test, on that contention, would be not the character of the words but their volume, so that one could illegally orate "Jabberwocky." The point is of sufficient difficulty for the magistrate to have reserved judgment until the middle of September.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Sikhs and the Gruntham

Sir,—*R.* v. *Pritam Singh* [1958] 1 W.L.R. 143 emphasises the very real difficulties arising from the need for a Sikh to be sworn upon the almost non-existent *Granth* (or *Gruntham*), mentioned in your issue of 17th July, 1959. Mr. Commissioner Wrangham said to the jury in that case: "You may think that, where it was found impossible or difficult that a man should be sworn according to the oath of his own religion, it would be reasonable if Parliament provided that he should be permitted by his own consent to affirm and that such affirmation should count as an oath, but Parliament has not yet made such an enactment."

Some time ago I was warned that a Sikh would be called as a prosecution witness before the Rotherham Magistrates, and I borrowed the Leicester copy of the *Granth*. The book is written in Punjabi manuscript on parchment and bears the following words on the flysheet, "Sikh *Granth* taken from a tent in the entrenchments at Ferozshapur, 24th December, 1845." The witness seemed far from impressed by our anxiety to conform with his religious beliefs. Indeed, I am sure he would have taken the oath quite cheerfully upon the local telephone directory if so requested, and it would probably have been just as effective. But perhaps I am being unkind.

R. KENNETH COOKE.

Rotherham.

Specimen Epitome

Sir,—Referring to your suggested specimen epitome of title in your issue dated 17th July, I should think that what you suggest would do very well as a precedent, but I would like to make the following comments: It would be very useful when the property is sold again if the existing epitome of title could be re-used, with the necessary addition or additions. It would help this then if the names "Mr. J. Codd and Mrs. Mary Codd" were omitted from the title at the top of the epitome, and if the last entry in col. 7 were omitted.

Instead of the last entry, it would be better, I suggest, if details of the forthcoming receipt (leaving the date blank) should be given; a note could be made in correspondence of the contents of the last entry.

If the precedent is used as you print it, the epitome might possibly be used for one further sale, by crossing off the owners' names, etc., but after that the document would probably have to be re-typed.

A. E. PARKER.

Scarborough.

[Readers are reminded that we hope to consider the best form of epitome in a further article taking readers' views into account. Further letters will be welcomed during the next two weeks.—ED.]

"THE SOLICITORS' JOURNAL," 6th AUGUST, 1859

ON the 6th August, 1859, THE SOLICITORS' JOURNAL reported: "A general meeting of the members of the Inns of Court to receive the report of the committee for the proposed Volunteer Rifle Corps . . . was held at Lincoln's Inn Hall on Saturday afternoon . . . Mr. Selwyn, Q.C., M.P., was called to the chair. The Hon. Secretary, Mr. Kenyon Parker, read the report of the committee's proceedings. They had in the first place directed their attention to obtain a rifle practice ground . . . With regard to the uniform, arms and accoutrements, they considered that the entire expense to each member ought not to exceed £10 of which the uniform would cost four guineas. If they selected the Government rifle and accepted the offer of being supplied with 25 per cent. of the rifles . . . the expenses might be diminished fully one-half. But if a breach-loading rifle should be preferred the cost would be increased. The chairman said . . . he need not go into questions of detail. He felt satisfied that no recent circumstances should change the determination come to by members of the Inns of Court to form themselves into a rifle corps. It was true that . . . he had heard the first minister of the Crown say that what he was pleased to call the rifle club fever would soon pass away. . . . He thought, on the contrary, that those who had come forward as volunteers would show that it was no passing feeling that actuated them . . . Mr. E. Webster did not agree . . . that circumstances had not altered since they last met. He thought the Emperor of the French was now disposed to adopt a policy of peace. He should be glad if this meeting led rather to the formation of rifle clubs than of a rifle corps. Mr. Carden hoped it would be understood that the rifle corps were for purposes of national defence solely and not formed with any view to internal disturbances. The motion for the adoption of the report was . . . carried unanimously."

REVIEW

The Cy-Près Doctrine. By L. A. SHERIDAN, LL.B., Ph.D., of Lincoln's Inn, Barrister-at-Law, and V. T. H. DELANY, M.A., LL.D., of Lincoln's Inn, King's Inns, Dublin, and the Inns of Court of Northern Ireland, Barrister-at-Law. pp. xxxvi and (with Index) 166. 1959. London: Sweet & Maxwell, Ltd. £2 10s. net.

There are occasions on which the doctrine of *cy-près* may be invoked otherwise than in connection with charitable trusts, and these receive mention in this book. But they are unimportant and the authors have rightly devoted most of their energies to a discussion of the doctrine in its most common aspect—the law of charitable trusts. This is a difficult subject, worthy of serious discussion, which it receives here. Its difficulty is an essential diffuseness. A *cy-près* application may be ordered in one of two circumstances. Either a donor, while making it clear that his gift is to be devoted to a charitable purpose, does not provide in practical detail how it is to be applied: the court then supplies this omission, if it is satisfied that the donor's disposition is infused with a general charitable intent. Or a gift clearly intended for a charitable purpose may be or become impossible to carry out: the court (or sometimes the Crown) then applies it for an analogous charitable purpose. These are really two quite distinct principles, each infected with its own particular difficulties which are not common to the other. About the first, there is the difficulty of defining "general charitable intent": the cases noted on pp. 33–36 illustrate this. About the second, there is the difficulty of defining "impossibility." What is impracticable may sometimes be regarded as impossible, but are the two wholly equated in our law? Recent decisions suggest an affirmative answer. In *Re Robertson; Wright* v. *Tugwell* [1923] 2 Ch. 332, a condition that the officiating clergyman should wear a black Geneva gown was excised from a gift to a church as "impracticable." In *Re Dominion Students' Hall Trust* [1947] L.J.R. 371, a "colour bar" restricting a charity to persons of European origin was excised as "falling within the broad description of impossibility." This is stretching the meaning of "impossibility" indeed, but these cases are accepted here at their face value. But if they are right, why is it that in Australia and New Zealand (which share the basis of our law) it has been deemed necessary, as the authors point out on p. 51, to confer statutory powers on the courts to "blue pencil" such conditions? This short discussion of general principles leads to the only serious criticism to which this book is open: the authors cite a very large number of cases, decided in many ages (starting with an opinion of Modestinus) and ranging over many countries (including Scotland, which has this doctrine no doubt as a result of its Roman origin). But this mass of case law is sometimes rather uncritically received. Many of the cases cited at pp. 39–44, in the sections "Nature of a *cy-près* order," would hardly be listened to, let alone followed, to-day. (When the authors do give their critical faculty a free rein—e.g., in their comments on some of the Nathan Committee's recommendations—they are very forceful.) Nevertheless, even this criticism is blunted by the convenience of having so much case law available for reference under well arranged heads. This is a subject in which the cases are of primary importance, but there is a useful note at pp. 45–49 on the relevant statutes, some of them little known, and the administrative background of the subject (the creation of the Charity Commissioners here and also in Ireland—strangely enough, half a century earlier) is not overlooked. The authors have a pleasant style and their learning appears to be as accurate as it is comprehensive. There is only one omission to be noted, *Killner* v. *France* (1947), at first instance, which runs counter to the authors' view that in modern practice application of a fund under the sign manual procedure is inappropriate where a trust is declared (cf. *Re Bennett*, p. 618, *post*).

IN WESTMINSTER AND WHITEHALL

ROYAL ASSENT

The following Bills received the Royal Assent on 29th July:—

Appropriation.
Bootle Corporation.
British Transport Commission.
British Transport Commission Order Confirmation.
City of London (Various Powers).
Colonial Development and Welfare.
Edinburgh College of Art Order Confirmation.
Education.
Export Guarantees.
Factories.
Falmouth Docks.
Fatal Accidents.
Finance.
Halifax Corporation.
Humber Bridge.
Joseph Rowntree Memorial Trust.
Landlord and Tenant (Furniture and Fittings).
Lee Valley Water.
Legitimacy.
Leith Harbour and Docks Order Confirmation.
London County Council (General Powers).
Mental Health.
Mid-Wessex Water.
National Galleries of Scotland.
New Towns.
Obscene Publications.
Pier and Harbour Order (Gloucester) Confirmation.
Pier and Harbour Order (Medway Lower Navigation) Confirmation.
Portsmouth Corporation.
Shell-Mex and B.P. (London Airport Pipeline).
South Wales Transport.
Statute Law Revision.
Tees Valley and Cleveland Water.
Town and Country Planning (Scotland).
Wages Councils.

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time:—

Leasehold Enfranchisement and Restrictive Covenants Bill [H.L.] [28th July.

HOUSE OF COMMONS

QUESTIONS

MEDICAL AUXILIARIES (REGISTRATION)

Mr. WALKER-SMITH said that the Government had considered a scheme for statutory registration worked out with the representatives of the medical auxiliaries concerned, the views of the medical profession on that scheme, and the comments of the professional bodies on those views, and had decided to introduce legislation at an early opportunity. [28th July.

FACTORIES ACT, 1959

The MINISTER OF LABOUR announced his intention to bring all the provisions of the Factories Act, 1959, into operation at the earliest practicable date. It was at present his intention, subject to consultations with interested organisations, to make an Order under s. 34 of the Act bringing the following provisions into operation on 1st December next, viz., the provisions in ss. 3, 4, 7, subss. (2), (3) and (4) of s. 8, ss. 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, Sched. II, and the parts of Sched. III relating to repeals effected by the foregoing provisions. In the case of the other provisions of the Act, it was necessary to allow more time either for occupiers of factories to make the

necessary changes to comply with the Act, or to his department and other authorities responsible for administering it. The necessary consultations with interested organisations were being put in hand without delay. [29th July.

CRIMINAL APPEALS

Mr. R. A. BUTLER announced the Government's intention to amend the law to provide an appeal from the Divisional Court to the House of Lords in any criminal cause or matter, including not only applications for *habeas corpus* but also applications for prerogative orders and cases stated by magistrates or quarter sessions, as well as convictions for criminal contempt of court. Such appeal would lie only where the point of law involved was of general public importance. The Government proposed at the same time to abolish the certificate procedure under s. 1 (6) of the Criminal Appeal Act, 1907, and to provide for appeals from the Court of Criminal Appeal to be dealt with on substantially the same basis as those from the Divisional Court.

[30th July.

STATUTORY INSTRUMENTS

Clydebank and District (Burncrooks) Water Order, 1959. (S.I. 1959 No. 1248 (S.72).) 5d.

County Court (Amendment) Rules, 1959. (S.I. 1959 No. 1251 (L.7).) 7d.

County Court Fees Order, 1959. (S.I. 1959 No. 1262 (L.9).) 11d.

[See also Current Topic at p. 606, *ante*.]

County of Inverness (Allt A'Bhaile Uachdaraich, Balnain) Water Order, 1959. (S.I. 1959 No. 1261 (S.73).) 5d.

Exeter–Leeds Trunk Road (Beam Bridge Diversion) Order, 1959. (S.I. 1959 No. 1246.) 5d.

Foreign Compensation (Egypt) (Interim Distribution) Order, 1959. (S.I. 1959 No. 1291.) 5d.

Herring Industry (Grants for Fishing Vessels and Engines) (Amendment) Scheme, 1959. (S.I. 1959 No. 1274.) 5d.

Herring Subsidy (United Kingdom) Scheme, 1959. (S.I. 1959 No. 1271.) 5d.

Import Duties (General) (No. 8) Order, 1959. (S.I. 1959 No. 1250.) 4d.

Local Government (Allowances to Members) Regulations, 1959. (S.I. 1959 No. 1277.) 5d.

Local Government (Travelling Allowances, etc.) (Scotland) Amendment Regulations. 1959. (S.I. 1959 No. 1282 (S.75).) 5d.

London Traffic (Prescribed Routes) (Hornchurch) Regulations, 1959. (S.I. 1959 No. 1273.) 4d.

London Traffic (Prohibition of Waiting) (Basildon) Regulations, 1959. (S.I. 1959 No. 1272.) 5d.

Motor Vehicles (Authorisation of Special Types) (Amendment) Order, 1959. (S.I. 1959 No. 1281.) 5d.

Motor Vehicles (Speed Limit on Special Roads) Regulations, 1959. (S.I. 1959 No. 1279.) 5d.

National Assistance (Determination of Need) Amendment Regulations, 1959. (S.I. 1959 No. 1241.) 6d.

National Assistance (Disregard of Assets) Order, 1959. (S.I. 1959 No. 1244.) 5d.

National Gallery (Lending Outside the United Kingdom) (No. 2) Order, 1959. (S.I. 1959 No. 1245.) 4d.

Draft **Parliamentary Constituencies** Orders:—
(Coventry and Mid-Warwickshire). 5d.
(Gateshead). 5d.
(Gloucester and Stroud). 5d.
(Grimsby and Louth). 5d.
(Ilford and Woodford). 5d.
(Leeds, York and Barkston Ash). 5d.
(Lincoln and Grantham). 5d.
(North Somerset and Wells). 5d.
(Oxford and Henley). 5d.
(Portsmouth, Langstone and Petersfield). 5d.
(Preston South and South Fylde). 5d.
(Reading, Newbury and Wokingham). 5d.
(South-West Lancashire). 5d.
(Wandsworth, Kingston-upon-Thames and Richmond). 5d.

Plant and Machinery (Valuation for Rating) Rules, 1959. (S.I. 1959 No. 1255 (L.8).) 4d.

These rules provide for higher fees for referees on references under s. 24 of the Rating and Valuation Act, 1925, which makes provision for the determination of questions whether particular plant or machinery falls within the classes and descriptions which are rateable.

Public Works Loan Commissioners (Officers' Powers) Regulations, 1959. (S.I. 1959 No. 1253.) 5d.

Silo Subsidies (England and Wales and Northern Ireland) Scheme, 1959. (S.I. 1959 No. 1233.) 6d.

Silo Subsidies (Scotland) Scheme, 1959. (S.I. 1959 No. 1247 (S.71).) 6d.

South West Wales River Board (Fixed Engines) Order, 1959. (S.I. 1959 No. 1264.) 5d.

Special Roads (Classes of Traffic) Order, 1959. (S.I. 1959 No. 1280.) 5d.

Stopping up of Highways Orders:—
County of Derby (No. 6). (S.I. 1959 No. 1227.) 5d.
County of Essex (No. 15). (S.I. 1959 No. 1256.) 5d.
County of Huntingdon (No. 1). (S.I. 1959 No. 1249.) 5d.
County of Lincoln-Parts of Lindsey (No. 4). (S.I. 1959 No. 1236.) 5d.
City and County Borough of Liverpool (No. 6). (S.I. 1959 No. 1228.) 5d.
London (No. 28). (S.I. 1959 No. 1258.) 5d.
London (No. 29). (S.I. 1959 No. 1259.) 5d.
County of Monmouth (No. 5). (S.I. 1959 No. 1260.) 5d.
County of Northampton (No. 3). (S.I. 1959 No. 1257.) 5d.
County of Suffolk, East (No. 7). (S.I. 1959 No. 1229.) 5d.
County Borough of Sunderland (No. 1). (S.I. 1959 No. 1230.) 5d.
County of Sussex, West (No. 8). (S.I. 1959 No. 1231.) 5d.
County of Worcester (No. 4). (S.I. 1959 No. 1235.) 5d.
County of York, West Riding (No. 16). (S.I. 1959 No. 1237.) 5d.
County of York, West Riding (No. 17). (S.I. 1959 No. 1238.) 5d.

Superannuation (Transfers between Metropolitan Police Staffs and Local Government) Rules, 1959. (S.I. 1959 No. 1243.) 10d.

Teachers (Special Allowances) (Scotland) Provisional Regulations, 1959. (S.I. 1959 No. 1270 (S.74).) 5d.

Town and Country Planning General Development Order, 1959. (S.I. 1959 No. 1286.) 7d.

Town and Country Planning (Limit of Annual Value) Order, 1959. (S.I. 1959 No. 1318.) 4d.

Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959. (S.I. 1959 No. 1287.) 7d.

[See also Current Topic at p. 606, *ante*.]

Tribunals and Inquiries (National Insurance Adjudicator) Order, 1959. (S.I. 1959 No. 1267.) 4d.

White Fish Industry (Grants for Fishing Vessels and Engines) (Amendment) Scheme, 1959. (S.I. 1959 No. 1265.) 5d.

White Fish Subsidy (United Kingdom) Scheme, 1959. (S.I. 1959 No. 1266.) 7d.

SELECTED APPOINTED DAYS

July

29th Local Government (Allowances to Members) Regulations, 1959. (S.I. 1959 No. 1277.)

30th Foreign Compensation (Egypt) (Interim Distribution) Order, 1959. (S.I. 1959 No. 1291.)

August

1st Motor Vehicles (Authorisation of Special Types) (Amendment) Order, 1959. (S.I. 1959 No. 1281.)
Motor Vehicles (Speed Limit on Special Roads) Regulations, 1959. (S.I. 1959 No. 1279.)
Special Roads (Classes of Traffic) Order, 1959. (S.I. 1959 No. 1280.)
Tribunals and Inquiries (National Insurance Adjudicator) Order, 1959. (S.I. 1959 No. 1267.)

10th Plant and Machinery (Valuation for Rating) Rules, 1959. (S.I. 1959 No. 1255 (L.8).)

16th Town and Country Planning Act, 1959.
Town and Country Planning General Development Order, 1959. (S.I. 1959 No. 1286.)
Town and Country Planning (Limit of Annual Value) Order, 1959. (S.I. 1959 No. 1318.)
Town and Country Planning (Prescribed Forms of Notices) Regulations, 1959. (S.I. 1959 No. 1287.)

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

LANDLORD AND TENANT: NEW TENANCY PROPOSAL BY LANDLORD: REASONABLENESS OF TENANT'S REFUSAL: COSTS

Spyropoulos *v.* McClelland

Lord Evershed, M.R., Sellers and Harman, L.JJ.
9th July, 1959

Appeal from Judge Blagden sitting at Westminster County Court.

A flat occupied by a statutory tenant at a rent of £175 inclusive became decontrolled under the Rent Act, 1957. The tenant was a widow who supplemented her old age pension by taking in lodgers. The landlord offered to grant the tenant a new tenancy for three years at £375 a year exclusive of rates, but with a prohibition against taking in lodgers or paying guests. The landlord, however, agreed to permit the tenant to take in three nurses as lodgers, but this concession was to be "without prejudice to the written agreement between the parties, that is to say that it will not be legally binding." The tenant having refused to accept this proposal, the landlord claimed possession of the flat and the tenant applied for a suspension of execution under the Landlord and Tenant (Temporary Provisions) Act, 1958. The county court judge held that the tenant was unreasonable in refusing the landlord's proposal coupled with the "gentleman's agreement" with regard to lodgers and dismissed the tenant's application under the Act of 1958. The tenant appealed.

LORD EVERSHED, M.R., said that the so-called "gentleman's agreement" did not introduce a new term, but left the matter exactly as it was before, and if, as the judge held, the tenant not unreasonably refused to accept the original proposal she was not unreasonable in refusing to accept it after the "gentleman's agreement." The tenant was entitled to have the order for possession suspended for nine months from the date of the judge's order on 22nd January, 1959.

SELLERS, L.J., gave a concurring judgment.

HARMAN, L.J., agreeing, said that a "gentleman's agreement" had recently been described by Vaisey, J., as "An agreement between two persons, neither of whom is a gentleman, neither of whom intends to be bound by it, but each of whom hopes that the other may be"; and that was precisely a description of what was come to in the present case. It did not bind anybody and was therefore a nullity.

LORD EVERSHED, M.R., on the question of costs, said that "the court" in s. 4 (2) of the Act of 1958 did not refer to the Court of Appeal and nothing in the Act affected the powers of the Court of Appeal as to costs; the tenant was entitled to have the costs of the appeal; there would be no order as to the costs below. Appeal allowed.

APPEARANCES: *H. C. Pownall* (*W. Timothy Donovan*); *Norman Wiggins* (*Cain, Tompkins & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

Chancery Division

WILL: BEQUEST TO NON-EXISTENT INSTITUTION: NO TRUST: APPLICATION UNDER THE ROYAL PREROGATIVE

***In re* Bennett, deceased; Sucker *v.* Attorney-General**

Vaisey, J. 24th July, 1959

Adjourned summons.

A testatrix, by her will dated 28th March, 1957, bequeathed one quarter share of her residuary estate to "The Hospital for Incurable Women, of Brompton Road, London." She appointed executors of the will, but provided no trusts therein. She died in 1958. The evidence was that no institution existed under the above title, and the only institutions in London which might answer to that description had both relinquished any formal claim to the share of residue. The executors applied to the court for a scheme for the application of that quarter of the residuary estate.

VAISEY, J., said that the question was whether the defect in the will ought to be put right by way of scheme or whether it was a matter which fell to be dealt with under the royal prerogative. That seemed to turn on this: was the gift to the non-existent beneficiary created by means of a trust or by means of a direct gift? The leading case on the subject was *Moggridge* v. *Thackwell* (1802), 7 Ves. 36. There Lord Eldon ruled that where there was a general, indefinite purpose not fixing itself upon any object, the disposition was in the King by sign manual; but where the execution was to be by a trustee, with general or some objects pointed out, there the court would take administration of the trust. Admittedly, three cases were out of line with that case and there was a certain amount of uncertainty about the position; but his lordship thought that the jurisdiction of the royal prerogative was one that had to be most carefully safeguarded. He could find no trust in the will, and this being a court of equity, he could not direct a scheme. This fell plainly within the jurisdiction which belonged to Her Majesty under the royal prerogative. He would declare that the bequest of the quarter of the residue of the estate of the testatrix to "The Hospital for Incurable Women, of Brompton Road, London" was a valid charitable bequest and should be applied in accordance with the direction of Her Majesty the Queen.

APPEARANCES: *Denys Buckley* (*Treasury Solicitor*); *Raymond Walton* (*Smith & Hudson*, for *Jackson & Walton*, King's Lynn).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

Queen's Bench Division

ROAD TRAFFIC: HIGHWAY: MEANS OF ACCESS: LIMITATION ON POWERS OF HIGHWAY AUTHORITY TO OBSTRUCT: PREMISES BUILT AT JUNCTION OF TWO MAIN ROADS: PLACES OF REFUGE FOR SAFETY OF PEDESTRIANS CROSSING ROAD: POWER OF HIGHWAY AUTHORITY TO CAUSE STREET TO BE ALTERED

Ching Garage, Ltd. *v.* Chingford Corporation

Lord Parker, C.J. 10th July, 1959

Action.

The plaintiffs erected a garage in 1932 at the junction of two main roads. They also constructed, at their own expense and to plans approved by the highway authority, a means of access to the roadway at the road junction. At the point where the means of access emerged on to the highway there was a gap 40 feet wide where there was no kerb, granite sets being set down into the road to form the plaintiffs' means of access. The highway authority now proposed to obstruct the plaintiffs' means of access by erecting a structure (which they described as a street refuge) at the road junction and in the middle of the 40-foot wide gap. The plaintiffs sought a declaration that the highway authority had no power to obstruct, limit or interfere with the means of access, whereupon the highway authority claimed that they were empowered by s. 45 (1) of the Road Traffic Act, 1956, to construct "places of refuge for the safety of foot passengers crossing the road" and, further, that they were empowered by s. 149 of the Public Health Act, 1875, to cause the street to be "altered."

LORD PARKER, C.J., said that at common law everyone who owned and occupied land adjoining a highway had a right of access thereto. On the other hand there were many statutory powers given to local authorities which clearly contemplated interference with private rights of access and in those circumstances must be treated as giving powers of interference. It therefore became necessary to see whether by statute the highway authority had the powers they claimed to erect this structure in the access which had been constructed to plans approved by them in 1932. They relied upon s. 149 of the Public Health Act, 1875.

and s. 45 (1) of the Road Traffic Act, 1956. As to the latter provision, s. 45 (1) provided that: "The highway authority for any road repairable by the inhabitants at large shall have power to construct and maintain works in the carriageway—(*c*) for providing places of refuge for the protection of foot passengers crossing the road." He would be prepared to read "places of refuge" as places for the safety of pedestrians who were about to cross or who had just crossed the road. But power was only given to the highway authority to construct and maintain works "in the carriageway"; and the place where this refuge was to be erected, though in the highway, was not in the carriageway. Section 149 of the Public Health Act, 1875, gave power to an urban authority, *inter alia*, to cause streets to be "altered." In his lordship's judgment the highway authority could not justify the proposed construction under that section, but even if he were wrong on that they would have to pay compensation for any resulting injury under s. 308 of the same Act. Finally, it had been submitted by the highway authority that the proposed structure would not prevent the plaintiffs' access to the highway but would only interfere with them when they got on to the highway. He could not accede to that argument, since in this connection access to the highway must mean access to the carriageway. In the circumstances neither of the statutory provisions relied upon enabled the highway authority to do what they proposed and the plaintiffs were entitled to a declaration accordingly.

APPEARANCES: *G. D. Squibb*, Q.C., and *D. P. Kerrigan* (*Hillearys*); *Douglas Frank* (*C. G. Dennis*, Town Clerk, Chingford).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

MOTOR VEHICLE INSURANCE: POLICY INSURING DRIVER AGAINST LIABILITY TO VOLUNTARY PASSENGERS: PAYMENT MADE BY INSURER TO PASSENGER WITHOUT KNOWLEDGE THAT HOSPITAL TREATMENT GIVEN TO INJURED PASSENGER: WHETHER HOSPITAL ENTITLED TO CLAIM COST OF TREATMENT FROM INSURERS

Barnet Group Hospital Management Committee *v.* Eagle Star Insurance Co., Ltd.

Salmon, J. 30th July, 1959

Action.

G, a passenger in a motor car, was injured in a motor accident and admitted to hospital where he was given treatment, the expenses incurred by the hospital being £12 12s. 6d. At the time of the accident *G's* driver was insured for all liability as required by s. 36 (1) (*b*) of the Road Traffic Act, 1930, and also against liability to voluntary passengers in his car. His insurance company made a payment to *G* in respect of his injuries. At the time of payment the company did not know that *G* had been treated in hospital although they knew of that fact before the hospital issued the writ in this action in which they claimed that they were entitled to recover the expenses which they had incurred in treating *G* from the insurance company. The hospital relied on s. 36 (2) of the Road Traffic Act, 1930, as substituted by s. 33 of the Road and Rail Traffic Act, 1933, and applied by Sched. X to the National Health Service Act, 1946. That section provides that "where any payment is made . . . by (*a*) an authorised insurer under or in consequence of a policy issued under . . . this Act; or . . . in respect of . . . bodily injury to any person arising out of the use of a motor vehicle on a road . . . and the person who has been so . . . injured has to the knowledge of the authorised insurer . . . received treatment at a hospital in respect of the injury so arising" there shall also be paid by the authorised insurer to the appropriate Regional Hospital Board the expenses reasonably incurred by the hospital in affording such treatment, limited to £50 for in-patients and £5 for out-patients.

SALMON, J., said that the first question for decision was whether the payment by the insurance company (who were admittedly authorised insurers) was a payment in consequence of a policy issued under the Act. It was beyond argument that it was. True, it included cover in respect of liability for the death or bodily injury of passengers which it was not required to include by s. 36 (1) of the Act of 1930, but there was no reason why a policy which gave the cover required by the Act and complied with all the requirements thereof failed to qualify as a policy issued under the Act merely because it included cover beyond that made compulsory by the Act.

The next question was whether *G* was "any person" within the meaning of s. 36 (2). *Prima facie* he was. The submission that "any person" meant any person of the class required to be covered by the Act involved writing words into the statute that were not there. If the Legislature had intended the payment mentioned in s. 36 (2) to be confined to persons of the classes required to be covered by the Act it could have expressed that intention in plain language as it had in ss. 10 and 11 of the Act of 1934, which excluded voluntary passengers from their ambit. The words of s. 36 (2) were as wide as they could be and he could see no reason for cutting down their meaning. Counsel for the insurance company had been right when he suggested that the object of Parliament in passing the Road Traffic Acts was to protect not only third parties injured in motor accidents but also the hospitals who treated them. His lordship could see no reason why the provision of s. 36 (2) should be confined to persons compulsorily insured and exclude voluntary passengers. Accordingly he held that the words "any person" in s. 36 (2) did include voluntary passengers.

Those conclusions could not, however, affect the result of this case having regard to the view he had formed on the final point argued before him which concerned the hospital treatment given to an injured person "to the knowledge of the authorised insurer." The strict grammatical interpretation of the words of the subsection was that in order for any liability to fall upon the insurers in respect of hospital treatment they must have knowledge of the treatment before paying the third party. Many thousands of claims by third parties were settled each year by insurance companies. In assessing the value of the claim it was important that they should appreciate their possible total liability. It would be a hardship if, after paying out a claim to avoid litigation in ignorance of hospital treatment, the insurers should have to pay out a further sum in respect of such treatment. There seemed no reason for the Legislature to insert in s. 36 the provision as to knowledge of the hospital treatment unless the knowledge was to precede the payment to third parties. The argument advanced for the hospital that the knowledge need only precede the issue of the writ did not carry conviction. Accordingly, since it was admitted that the insurance company did not know of the hospital treatment until after they made their payment to *G*, they were under no statutory obligation to pay the expenses of that treatment to the hospital. There would be judgment for the insurance company.

APPEARANCES: *J. R. Cumming-Bruce* (*Merton Jones, Lewsey and Jefferies*); *Gerald Gardiner*, Q.C., and *Michael Lee* (*Simmons and Simmons*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

Courts-Martial Appeal Court

CONVICTION AT DISTRICT COURT-MARTIAL: APPLICATION FOR LEAVE TO WITHDRAW NOTICE OF ABANDONMENT OF APPEAL: PRACTICE OF COURT IN DEALING WITH SUCH APPLICATIONS

R. *v.* Caddy

Byrne, Slade and Salmon, JJ. 20th July, 1959

Application for leave to withdraw abandonment of appeal.

A corporal in the army was convicted by district court-martial of three offences of conduct to the prejudice of good order and discipline and sentenced to six months' detention and reduction to the ranks. The confirming officer remitted the detention but confirmed the reduction to the ranks. The corporal presented a petition pursuant to s. 3 (2) (*a*) of the Army Act, but that was refused, and his application to the single judge for leave to appeal against his conviction was also refused. He then sent in a notice abandoning his appeal (on form 4 as set out in Sched. I to the Courts-Martial Appeals Rules, 1952), but subsequently, while still within the time allowed by the Rules, he applied to the Courts-Martial Appeal Court for leave to appeal against his conviction, stating that he wished to withdraw his notice of abandonment of appeal, on the ground that he had had legal advice to the effect that he would be unwise to abandon his appeal.

SLADE, J., said that in *R.* v. *Moore* [1957] 1 W.L.R. 841 the Court of Criminal Appeal had laid down the practice to be observed in that court in dealing with applications for leave to withdraw notice of abandonment. The only real difference between an application to the Courts-Martial Appeal Court and the Court of Criminal Appeal was that r. 23 of the Criminal Appeal Rules, 1908, made under the Criminal Appeal Act, 1907, provided that when a notice of abandonment was served the appeal should be deemed to have been dismissed. There was no corresponding rule in the Courts-Martial Appeal Rules, 1952. There was no reference either in the Criminal Appeal Act, 1907, or the Courts-Martial Appeal Act, 1951, to withdrawals of notices of abandonment. As indicated in *R.* v. *Moore*, the Court of Criminal Appeal would not entertain applications for the withdrawal of notices of abandonment unless something amounting to mistake or fraud was alleged, which, if established, would enable the court to say that the notice of abandonment should be regarded as a nullity. The court saw no ground whatever for differentiating the procedure in the Courts-Martial Appeal Court from that in the Court of Criminal Appeal. Here there was nothing approaching the exceptional circumstances which would enable the court to treat the notice of abandonment as a nullity and accordingly the application was refused.

The applicant did not appear and was not represented.

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law]

NOTES AND NEWS

SOLICITORS' PRACTICE RULES, 1936

The Council of The Law Society, with the approval of the Master of the Rolls, has amended r. 2 of the Solicitors' Practice Rules, 1936 (designed to prevent undercutting), to read as follows :—

A solicitor shall not hold himself out or allow himself to be held out directly or indirectly and whether or not by name as being prepared to do professional business in contentious matters at less than the scale fixed by Rules of Court or (except with the consent of The Law Society or, in the case of a conveyancing transaction affecting an interest in land, of the Provincial Law Society in whose area the land is situated) in non-contentious matters at less than the scale fixed by the Solicitors' Remuneration Orders or (as the case may be) the Solicitors' Remuneration (Registered Land) Orders for the time being in force :

Provided always that—

(*a*) Where as the result of rules made by a Provincial Law Society or otherwise, a special scale of charges prevails in any district for a particular class of transaction affecting an interest in land situated in that district, such scale shall, if less than the scale of charges fixed by the above-mentioned orders, be substituted in respect of such transactions in this rule for the scale fixed by the Solicitors' Remuneration Orders or (as the case may be) the Solicitors' Remuneration (Registered Land) Orders for the time being in force.

(*b*) In order to ascertain the special scale of charges, if any, for a particular class of transaction in any district, the Council may request the Provincial Law Society in whose area such district is situated, or if there be no such Provincial Law Society then any Provincial Law Society in the neighbourhood of such district, to make inquiries and report by their Secretary as to the existence of any such scale. Such report shall constitute *prima facie* evidence as to the special scale, if any, for a particular class of transaction prevailing in such district.

SOLICITORS' MANAGING CLERKS' ASSOCIATION

The Association will provide during Michaelmas and Hilary Terms, 1959–60, two courses of instruction in Litigation and Elementary Conveyancing for junior clerks. These courses will enable the students to prepare themselves for the award of the Association's Certificate of Proficiency. The lectures will, with the kind permission of the Lord Chief Justice, be given in his lordship's court at the Royal Courts of Justice, commencing on Monday, 28th September, and Wednesday, 7th October, 1959. Full particulars may be obtained on application to the Hon. Secretary of Students Lectures, at the office of the Association, Maltravers House, Arundel Street, Strand, London, W.C.2.

LAW DELEGATION FOR POLAND

A delegation of six British lawyers left on Wednesday, 29th July, for a twelve-day visit to Poland sponsored by the British Council. It is a return for the successful visit of a similar Polish law delegation which came to the United Kingdom last summer under the joint auspices of the British Council and the Polish Academy of Sciences. Led by Mr. Justice Edmund Davies, the delegates are : Professor Dennis Lloyd of University College, London ; Mr. David Karmel, Q.C. ; Mr. Edward Cussen ; Sir Sydney Littlewood ; and Mr. W. O. Carter. They will be the guests of the Union of Polish Lawyers and the Polish General Council of Barristers who have arranged a very full programme.

SOKE OF PETERBOROUGH DEVELOPMENT PLAN APPROVED

The Minister of Housing and Local Government has approved with modifications the development plan for the Soke of Peterborough. The plan, as approved, will be deposited in the County Offices, Bridge Street, Peterborough, for inspection by the public.

THE LAW SOCIETY'S PRELIMINARY EXAMINATION

Out of the thirty-four candidates who sat for The Law Society's preliminary examination in July, ten passed.

WORLD WATER SPEED RECORD FOR MANCHESTER SOLICITOR

Mr. Norman Buckley, solicitor, of Manchester, regained the world water speed record for the 1,200 kilogramme class hydroplane over a measured kilometre on Lake Windermere on 25th July. He averaged 120·61 m.p.h.

Wills and Bequests

Sir HENRY DASHWOOD, solicitor, left £35,781 net.

Mr. E. GUYE, solicitor, of Brenchley, Kent, left £45,642 net.

Mr. H. H. MOSELEY, solicitor, of Wimbledon, London, left £48,917 net.

Mr. HENRY THOMAS ROBINSON, retired solicitor, of Bournemouth, left £66,043 net.

Mr. GUY LEOPOLD SPOONER, retired solicitor, of Weymouth, left £62,721 net.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices : Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone : CHAncery 6855.

Annual Subscription : Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).